

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Baozhi Zhu, individually and on behalf of all other
Employees Similarly Situated,

Plaintiff,

v.

Monroe Chocolate Spa & Nails Inc., Xiang Ji, Le Han,
and "John" (First Name Unknown) Xu

Defendants.
-----X

Case No.: 1:18-cv-03024

**DEFENDANTS' ANSWER &
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S FIRST AMENDED
COLLECTIVE AND CLASS ACTION
COMPLAINT**

Defendants Monroe Chocolate Spa & Nails, Inc., Xiang Ji, Le Han, and "John" (First Name Unknown) Xu (collectively referred to herein as "Defendants"), by and through their undersigned counsel, hereby answer each and every allegation contained in Plaintiff's Complaint, upon information and belief, as follows:

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
INTRODUCTION**

1. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

2. Denied.

3. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

4. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
JURISDICTION AND VENUE**

5. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

6. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
PLAINTIFFS**

7. Denied.
8. Denied.
9. Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
DEFENDANTS**

10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF FACTS**

22. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

23. Denied. The Defendants further deny that there was any non-payment of overtime pay, and they further deny that they failed to provide any required notice(s).

Plaintiff Bao Zhi Zhu

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. The Defendants lack sufficient information to either admit or deny this paragraph.

Therefore, Defendants deny this paragraph.

29. The Defendants lack sufficient information to either admit or deny this paragraph.

Therefore, Defendants deny this paragraph.

30. Denied.

Plaintiff Yao Cheng

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

Plaintiff Tingzhi Zhang

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

47. Denied. The Defendants further deny that there was any nonpayment of overtime wages. The Defendants also deny that they caused any economic injury to Plaintiff or the class members and they deny that they violated any laws.

48. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

49. Denied.

50. Denied.

51. Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
COLLECTIVE ACTION ALLEGATIONS**

52. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

53. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

54. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

55. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

56. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

57. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

58. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

a. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

b. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

c. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

d. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

e. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

59. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

60. Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
CLASS ACTION ALLEGATIONS**

61. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

62. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

63. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

64. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

65. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

66. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

67. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

68. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

a. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

b. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

c. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

d. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

- e. This paragraph sets forth a legal conclusion(s) to which no response is necessary.

Notwithstanding the foregoing, the Defendants answer as follows: Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIMS**

COUNT I

**[Violations of the Fair Labor Standards Act – Overtime Wage
Brought on behalf of the Plaintiffs and the FLSA Collective]**

69. (Plaintiffs' Par. "49" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.
70. (Plaintiffs' Par. "50 [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.
71. (Plaintiffs' Par. "51" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.
72. (Plaintiffs' Par. "52" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. Defendants further deny that they failed to pay Plaintiff and/or the FLSA Collective any owed overtime pay.
73. (Plaintiffs' Par. "53" [sic]) Denied.
74. (Plaintiffs' Par. "54" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.
75. (Plaintiffs' Par. "55" [sic]) Denied.

76. (Plaintiffs' Par. "56" [sic]) Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIM**

**COUNT II
[Violation of New York Labor Law – Overtime Pay]**

77. (Plaintiffs' Par. "57" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.

78. (Plaintiffs' Par. "58" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.

79. (Plaintiffs' Par. "59" [sic]) Denied. Defendants further deny that they failed to pay Plaintiff and/or the Rule 23 Class any owed overtime pay.

80. (Plaintiffs' Par. "60" [sic]) Denied. Defendants further deny that they failed to pay Plaintiff and/or the Rule 23 Class any owed monies.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIM**

**COUNT III
[Violation of New York Labor Law – Time of Hire Wage Notice Requirement]**

81. (Plaintiffs' Par. "61" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.

82. (Plaintiffs' Par. "62" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.

83. (Plaintiffs' Par. "63" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.

84. (Plaintiffs' Par. "64" [sic]) Denied.

85. (Plaintiffs' Par. "65" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIM**

COUNT IV

[Violation of New York Labor Law-New York Pay Stub Requirement]

86. (Plaintiffs' Par. "66" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.

87. (Plaintiffs' Par. "67" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied.

88. (Plaintiffs' Par. "68" [sic]) Denied.

89. (Plaintiffs' Par. "69" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated New York Labor Law or any other laws.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIM**

COUNT V

**[Violation of Fair Labor Standards Act - Retaliation Brought on behalf of Plaintiffs
Cheng and Zhang]**

90. (Plaintiffs' Par. "70" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.

91. (Plaintiffs' Par. "71" [sic]) Denied. The Defendants further deny that they violated the Fair Labor Standards Act or any other laws.
92. (Plaintiffs' Par. "72" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated the Fair Labor Standards Act or any other laws.
93. (Plaintiffs' Par. "73" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated the Fair Labor Standards Act or any other laws.

**IN RESPONSE TO THE CLAIMS ASSERTED FROM THE SECTION TITLED
STATEMENT OF CLAIM**

COUNT VI

**[Violation of New York Labor Law - Retaliation Brought on behalf of Plaintiffs
Cheng and Zhang]**

94. (Plaintiffs' Par. "74" [sic]) This paragraph does not require a response. Nevertheless, the Defendants refer Plaintiff to the preceding responses set forth above.
95. (Plaintiffs' Par. "75" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated New York Labor Law or any other laws.
96. (Plaintiffs' Par. "76" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as

follows: Denied. The Defendants further deny that they violated the New York Labor Law or any other laws.

97. (Plaintiffs' Par. "77" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated the New York Labor Law or any other laws.

98. (Plaintiffs' Par. "78" [sic]) This paragraph sets forth a legal conclusion(s) to which no response is necessary. Notwithstanding the foregoing, the Defendants answer as follows: Denied. The Defendants further deny that they violated the New York Labor Law or any other laws.

PRAYER FOR RELIEF

WHEREFORE, the Defendants deny all of the request for damages and relief made by Plaintiff and request judgment dismissing all of plaintiff's causes of action and its Complaint, together with an order granting the Defendants costs, disbursements, reasonable attorneys' fees, and any other relief the court deems just and proper.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Plaintiffs were each compensated in conformity with 29 U.S.C. §§201 et. seq., New York Law Labor §§650 et. seq. and §190 et. seq. and 12 NYCRR §§ 142-2.1 et. seq.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendants had reasonable grounds for believing that the alleged act(s) or omission(s) giving rise to Plaintiff's action were in good faith and for believing that such act(s) or omission(s) were not in violation of the Fair Labor Standards Act.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiffs claim wages and overtime compensation for activities exempted from the application of the Fair Labor Standards Act pursuant to 29 U.S.C. §254, which includes, but is not limited to: walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform; and activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time or any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Defendants are exempt from the provisions of 29 U.S.C. §207 under 29 U.S.C. §213(b)(1), as Plaintiffs are employees whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of §204 of the Motor Carrier Act of 1935.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The Defendants are exempt from the provisions of 12 NYCRR §142-2.2, as the parties are subject to the exemptions of §§207 and 213 of the Fair Labor Standards Act of 1938, as amended.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Defendants provided notice to the Plaintiffs of their regular rate of pay or overtime rate of pay in accordance with New York Labor Law §195.1 and the Wage Theft Prevention Act.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

This action should not proceed as a class action, as not all of the prerequisites for a class action, as set forth in Rule 23 of the FRCP, are met.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

This action is barred as to some of the members in the alleged class, as the statute of limitations, as set forth in 29 U.S.C. §255, has elapsed.

WHEREFORE, the Defendants deny all of the request for damages and relief made by Plaintiff and request judgment dismissing all of plaintiff's causes of action and its Complaint, together with an order granting the Defendants costs, disbursements, reasonable attorneys' fees, and any other relief the court deems just and proper.

Dated: October 19, 2018
New York, NY

/s Heng Wang
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